

REMARKS/ARGUMENTS

The Claims are amended herein to be in a more suitable U.S. format. No new matter is added to these claims and these amendments herein are not made for the purposes of patentability. Each of the claims herein should be understood to encompass its full range of equivalents.

In the Official Action, restriction was required as between each of Claims 2-12 and 14, designated as Embodiments 1-12, respectively. Further, Figures 2 and 3 are listed as respectively as separate embodiments 14 and 15. It must be stated as a very first matter, this restriction requirement is improper in its form, composition, and lack of substance.

For some unexplainable reason, the only independent Claim in the current claim set, Claim 1, is not listed as being a part of any embodiment. In fact, on page 3, first paragraph of the Office Action, it is stated that none of the claims are generic. In the Office Action, none of the so-called embodiments are designated as being in "groups" so it is presumed that the term "Embodiments" is substituted in the Office Action for the formal term "Groups".

There is no presentation of a reason in the Office Action why each of the "Embodiments" are being restricted.

This restriction requirement is respectfully traversed.

Election of Species Under Traverse

In response, as a formality merely to comply with §818.03(b), Applicants hereby preliminarily elect Claim 2, designated as Embodiment 1, for an examination on the merits. It is presumed for form that Independent Claim 1 is part of this claim group/embodiment.

Arguments in Support of Traversal of Restriction

As a first point, the Office Action has not given any reason why the supposed "species" are considered to be patentably distinct. Without any supporting reasons, it is not Applicants' burden to show they are not distinct. Likewise it is not incumbent upon Applicants to admit that subgroups of claims are obvious variants of other groups of claims. The features are not obvious unless the Office Action cites prior art showing that dependent features are obvious in view of the cited prior art.

It is Applicants' position that in fact each of the claims are drawn essentially to a single embodiment defining the same essential features and are not drawn to separate species. This fact should be clear merely from the claims themselves that are all submitted as dependent on Claim 1. In fact, it is only by the features of the dependent claims that the Office Action could distinguish amongst the cited "Embodiments" on page 2. Each of

the claims in fact are drawn to a "control element having a rotary knob ..."

MPEP §802.01, entitled "Meaning of 'Independent' and 'Distinct' provides guidance as to the meaning of "independent and distinct" as used in 35 U.S.C. §121 and in 37 CFR 1.141. This in fact is the question as to when it is proper for the Commissioner to require restriction. The MPEP as a first matter states the obvious that "independent", of course, means not dependent. The MPEP further states that the "term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process." Clearly restriction is not proper in this case where each of Claims 2-14 are written in dependent form.

The MPEP states that the "term 'distinct' means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed. While this guidance in interpretation for the term "distinct" may

seem to provide free rein for restriction, this in fact is not the case.

The MPEP in §806.03 makes clear that (emphasis provided) "[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." The MPEP goes on further to state the motivation for the above requirement is "because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

MPEP §806.4 provides examples of when restriction is proper:

806.04 Independent Inventions

If it can be shown that the two or more inventions are in fact independent, applicant should be required to restrict the claims presented to but one of such independent inventions. For example:

(A) Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. An article of apparel such as a shoe, and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example.

(B) Where the two inventions are process and apparatus, and the apparatus cannot be used to practice the process or any part thereof, they are independent. A specific process of molding is independent from a molding apparatus which cannot be used to practice the specific process.

(C) Where species under a genus are independent, for example, a genus of paper clips having species differing in the manner in which a section of the wire is formed in order to achieve a greater increase in its holding power.

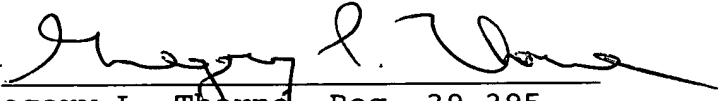
Clearly none of the above examples are applicable in the case wherein each claim is drawn to a control element having a rotary knob. The MPEP in §803 makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on the examiner is prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search (see, further MPEP §808.02). However, where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." Yet, the Office Action has done no more than to state that they are separate and distinct without any showing or explanation for this distinction.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits. In the event that this restriction requirement is upheld, it is respectfully requested that it be restated in a non-final form with support for the requirement so

that the Applicants may address that support in a subsequent response.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

By 
Gregory L. Thorne, Reg. 39,395
Senior Patent Counsel
(914) 333-9665

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By Noemi Chaz